

## REMARKS

**Claims 1-12 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant traverses the rejection of claims 1-5. Applicant submits that as currently amended claims 6-12 and 15-20 are not indefinite.**

The Examiner states that there is insufficient numerical antecedent basis for the limitations “**first** client”, “**first** instrument application”, “**first** client specific protocol”, and “**first** instrument application specific protocol” in claims 1-3, 8-12 and 15-20, and insufficient antecedent basis for the limitation “first protocol” in claims 4-6 and the limitation “the application specific protocol” in claim 7.

With regard to claims 1-7, Applicant submits that independent claim 1 clearly recites “a first client”, “a first instrument application”, “a first client specific protocol”, and “a first instrument application specific protocol”, before claim 1 or claims 2-3 recite “the first client”, “the first instrument application” etc. Applicant submits that there is sufficient numerical antecedent basis for the limitations in claim 1 and the claims dependent therefrom.

Claims 6, 8-12, and 15-16 have been amended to cure the antecedent basis defects noted by the Examiner. Claims 7, 13 and 14 have also been amended to improve clarity and to avoid similar antecedent basis issues.

**Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Agarwal, *et al* (hereafter "Agarwal") (US 5,958,010). Applicant traverses this rejection.**

Claims 1, 8, and 13 concern method and program for creating a protocol dependent control path within an instrument system to allow a first client to communicate with the instrument system. Elements required by claim 1 include an instrument system, a client, an instrument application that is part of the instrument system and that controls an instrument

that is part of the instrument system, signals that are external to the instrument system, a client specific protocol, and an instrument application specific protocol.

As best Applicant can understand the Examiner's argument with reference to passages on columns 3, 4, and 8, the Examiner is identifying EM agents, and monitoring station 24 as the instrument system. The instrument system monitors the operation of a server program operating on the network. The server is either server 20 or server 22. These servers perform functions in response to service requests from clients on the network, i.e. computers 12, 14, 16, and 18. Applicant assumes that the Examiner is identifying one of these computers as the first client recited in Claim 1.

The Examiner refers to various aspects of the module shown in Figure 3. It should be noted that this is one of the agents that monitors the data base servers, i.e., agents 38 and 40.

Agarwal teaches that the monitoring agents are part of the computers. The agents can be located on each client and server in the network and operate by coupling into the communications stack on each computer (column 3, lines 9-32). The embodiments discussed in the application are of this configuration, i.e., there is one agent associated with each computer in the system. The agents are code modules integrated into the protocol stacks of the network communication interfaces in the various computers. In this regard, it should be noted that the client computers are part of the instrument system identified by the Examiner, since the hardware that is used by the monitoring agents is that of the client computers. Hence, monitoring traffic at nodes does not involve measuring signals that are external to the instrument system, since the instrument system and the monitoring system identified by the Examiner are all part of the same distributed computing system.

However, even if one were to consider the agents and communications between the agents and the EM console system as being separate from the computers that are running the client/server applications and the monitoring agent applications, the resulting system does not satisfy the limitations of the claims. In the following remarks, Applicant will assume that Agarwal is being interpreted in terms of the monitoring system being separate from the computers generating the network traffic unless the context indicates otherwise, since absent such a characterization, the reference clearly does not satisfy the instrument system limitation.

With respect to Claims 1, 8, and 13, the Examiner maintains that the passage at column 4, lines 15-18 teaches that the first client invokes a first instrument application. Applicant must disagree with the Examiner's reading of Agarwal. The cited passage refers to one of the computers invoking a database application on one of the servers. If the client is the client program, e.g., computer 14 and the server is one of the servers, e.g. server 20, the client software would invoke a program on the server. If computer 14 and server 20 are part of the instrument system, such a communication does not involve a client invoking an instrument application on the instrument system, since the client is also part of the instrument system, and hence, both computers communicate in instrument specific protocols. If the agents are the instrument system and are separate from the computers, the servers and the client are not part of the instrument system identified by the Examiner, and hence, client is not communicating with the instrument system, i.e., the monitoring system. Hence, in either case, the system taught in Agarwal does not satisfy the limitation regarding invoking an instrument application of Claims 1, 8, 13 and the claims dependent therefrom.

With respect to the passage at column 8, lines 13-18, the Examiner maintains that this passage teaches that the first client is configured to communicate with the instrument system using a first client specific protocol. Again, Applicant must disagree with the Examiner's reading of the reference. The passage in question refers to the agents that are shown in Figure 3 and are attached to the nodes through which the data base servers communicate. The passage merely states that the nodes are aware of the communication protocols used in the client-server communications. Since the server is another "client" with respect to the claims in question, this passage merely relates to client-client communications.

Hence, the system taught in Agarwal does not satisfy the limitation regarding communication with a client specific protocol of Claims 1, 8, 13 and the claims dependent therefrom.

In the system of Agarwal, the agents monitor the network traffic and report the traffic to the EM console and data base. The client computers do not invoke monitoring applications, as the monitoring applications are always running and merely record network traffic between the various computers on the network. Furthermore, there is no teaching of

the monitoring system communicating with the client computers or the data base servers. Again, the monitoring system merely monitors traffic on the network and the servers. Hence, the instrument system identified by the Examiner does not create a control path between the first client, i.e., one of the computers and the instrument system, i.e., the EM agents and EM console. Furthermore, the monitoring system does not control the computers on the network, nor do the computers on the network control the monitoring system; hence there is no control path. Hence, the system taught in Agarwal does not satisfy the limitation regarding control path creation of Claims 1, 8, 13 and the claims dependent therefrom.

Accordingly, Applicant submits that Claims 1, 8, 13, and the claims dependent therefrom are not anticipated by Agarwal.

Claims 2 and 9 depend from Claim 1 and 8 respectively and further require that the method causes the instrument system to record the identification of the first client, first instrument application, first client specific protocol and first instrument application specific protocol. The Examiner maintains that the passage at column 4, lines 8-10 provides the teachings in question. Applicant must disagree with the Examiner's reading of Agarwal. The passage in question merely states the agent modules can record the data observed on the network node in the memory associated with each node or in a central database, i.e., EM database 44 shown in Figure 1. The only data that is available to record is the network traffic on the network. While that traffic could include the identification of the computers on the network, that traffic would not include the identification of an instrument specific protocol used for communications between the monitoring system and the clients, since the monitoring system does not communicate with the client computers. Furthermore, the network traffic does not include messages from the client computers to the monitoring system, hence, the network traffic would not have client specific protocol. Finally, it should be noted that the traffic does not necessarily identify the protocols being used by the processors at each end of a communication, since the processors already know this information. Hence, Applicant submits that there are additional grounds for allowing Claims 2 and 9.

With respect to Claims 3 and 10, the claims require that the instrument specific protocol be different from the client specific protocol. The Examiner looks to the passages at column 3, line 15 as teaching the application protocols and column 8, lines 13-14 as teaching

communication protocols that differ from the application protocols. The first passage notes that the agents monitor traffic. The second passage refers to communication protocols into and out of the nodes as being TCP. If anything, this argues that the protocols being used are the same. Finally, the communications between the clients and the database servers are not communications between the clients and the monitoring system. Hence, there are additional grounds for allowing Claims 3 and 10.

With respect to Claim 4, the Examiner maintains that Agarwal teaches the additional limitations because the passage at col. 3, line 66 refers to a plurality of server programs. The Examiner also looks to the passages in column 3 that refer to application protocols. The problem with the Examiner's argument is that programs and application protocols refer to communications between the client computers and the servers, not with respect to communications between the computers and the monitoring agents. These are communications between "clients" in the language of the claims in question, not between a "client" and the instrument system. Hence, Applicant submits that there are additional grounds for allowing Claim 4.

Claim 14 depends from Claim 13 and includes an additional limitation that is similar to Claim 4. Hence, Applicant submits that there are also additional grounds for allowing Claim 14.

Claim 11 includes the same limitations discussed above with respect to Claim 8, and includes an additional limitation similar to that of Claim 4 regarding a second application specific protocol different from the first application specific protocol. Hence, Applicant submits that Claim 11 is allowable for the same reasons that Claim 8 and Claim 4 are allowable.

Claim 5 depends from Claim 1 and requires two different client specific protocols. The Examiner looks to Figure 1 and the fact that there are a plurality of clients. The issue is not whether there is a plurality of clients but rather whether there is a plurality of client specific protocols for communicating between the clients, i.e., the computers, and the monitoring system of agents. Since the computers do not communicate with the monitoring system, there could not be two different client specific protocols. Furthermore, the Examiner

admits that that Agarwal does not teach two different client specific protocols. The Examiner attempts to overcome this problem by stating that repeating the steps of Agarwal does not render an invention novel. The claim does not merely repeat the steps, since it requires different client specific protocols. Furthermore, the rejection in question is for anticipation, not obviousness, and hence, the Examiner must point to each limitation of the claim in question in the reference. Hence, Applicant submits that there are additional grounds for allowing Claim 5.

Claim 12 includes the same limitations discussed above with respect to Claim 8, and includes an additional limitation similar to that of Claim 5 regarding a second client specific protocol different from the first client specific protocol. Hence, Applicant submits that Claim 12 is allowable for the same reasons that Claim 8 and Claim 5 are allowable

With respect to Claim 6, the Examiner essentially repeats the argument made with respect to Claim 5. Applicant repeats the arguments made above, and asserts that there are additional grounds for allowing Claim 6, and the claims dependent therefrom.

With respect to Claim 7, the Examiner states that Agarwal teaches the additional limitations but does not point to any teaching in the reference to support this assertion. Hence, Applicant submits that there are additional grounds for allowing Claim 7.

Claim 15 includes the same limitations discussed above with respect to Claims 1, 8, and 13 regarding invoking an instrument application, communication with a client specific protocol, and control path creation. As noted above, Agarwal does not teach these limitations. Hence, Applicant submits that Agarwal does not anticipate Claim 15 and the claims dependent therefrom.

**Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agarwal in view of Sharma, *et al* (hereafter "Sharma") (US 5,537,417). Applicant traverses the rejection.**

As per claim 16, which depends on claim 15, the Examiner stated that Agarwal further teaches wherein the control path comprises: a communication logic module configured to

receive communications from the first client which conform to the first claim specific protocol (column 8, lines 13-18). The Examiner admits that Agarwal does not explicitly teach translating such communications into communications to which the first instrument application is configured to understand and to which the first instrument application is configured to appropriately react, and to transfer the translated communications to the first instrument application. The Examiner looks to Sharma for the missing teachings. In particular, the Examiner maintains that Sharma teaches the translation of one communication protocol into another communication protocol.

First, Applicant submits that Claim 16 depends from Claim 15 and as noted above, Agarwal does not teach the limitations of Claim 15. Sharma does not provide the missing teachings, and hence, Applicant submits that the Examiner has not made a *prima facie* case for obviousness with respect to Claim 16 and the claims dependent therefrom.

Second, the Examiner states that Agarwal teaches a communication logic module configured to receive communications from the first client and looks to the passage at column 8, lines 13-18 to support this assertion. The module in question monitors communications at the server nodes; it does not receive communications from a client directed to the monitoring system.

Third, the communications between the client and server computers in Agarwal are already in the same protocol, and hence, there is no need to translate between protocols.

Fourth, there is no communication between the clients and the monitoring system, and hence, there is no reason to provide a translation function for that non-existent communication path.

Finally, the monitoring system merely records network traffic, and hence, the monitoring system does not need to translate any of the information in the network packets.

Hence, there are additional grounds for allowing Claim 16, and the claims dependent therefrom.

As per claim 17, which depends from claim 16, the Examiner stated that Agarwal further teaches wherein the communication logic module comprises: a server logic module configured to receive the communications from the first client (column 4, lines 4-7). Applicant must disagree with the Examiner's reading of Agarwal. The server module in question is EM database 44 that communicates with the agents. That server is involved in communications within the instrument system identified by the Examiner, not communications between a client outside the system and the system. Hence, there are additional grounds for allowing Claim 17.

As per claim 18, which depends on claim 16, the Examiner stated that Agarwal further teaches wherein the system further comprises: wherein the first instrument application comprises a virtual instrument and an application component logic module and wherein the virtual instrument is configured to receive communications from the communication logic module. The Examiner does not point to any teaching of a virtual instrument in Agarwal or Sharma. Hence, there are additional grounds for allowing Claim 18.

As per claim 19, which depends on claim 16, the Examiner stated that Agarwal further teaches wherein the system further comprises: an additional communication logic module configured to receive additional communications from an additional client which conform to an additional claim specific protocol. The Examiner admits that Agarwal does not explicitly teach translating such additional communications into communications to which an additional application is configured to understand and to which the additional application is configured to appropriately react, and to transfer the translated additional communications to the additional application. The Examiner looks to Sharma for the missing teachings.

Once again, Applicant asserts that Agarwal does not teach the communications recited in the claim, and hence, could not provide the additional limitations asserted by the Examiner. Hence, there are additional grounds for allowing Claim 19.

Claim 20 depends from claim 16 and further requires an additional communication logic module configured to receive additional communications from an additional client, which conform to an additional client specific protocol, to translate such additional communications into communications to which the application is configured to understand



and to which the application is configured to appropriately react. The Examiner presents the same grounds for rejection presented for claims 16 and 17. Applicant repeats the arguments presented above with respect to claims 16 and 17. Additionally, as noted above with respect to claim 19, Agarwal does not teach the communications recited in the claim, and hence, could not provide the additional limitations asserted by the Examiner.

Hence, Applicant submits that there are additional grounds for allowing claim 20.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Calvin B. Ward". The signature is fluid and cursive, with the first name "Calvin" being more prominent.

Calvin B. Ward  
Registration No. 30,896  
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Agilent Technologies, Inc.  
Legal Department, M/S DL429  
Intellectual Property Administration  
P.O. Box 7599  
Loveland, CO 80537-0599  
Telephone (925) 855-0413  
Telefax (925) 855-9214